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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/702,193

11/05/2003

Russell L. Kelley

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08/14/2006

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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EXAMINER

TRAN, SUSAN T

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/702,193	KELLEY, RUSSELL L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Susan T. Tran	1615	

**Period of Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed 01/30/04 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-52 of U.S. Patent No. 6,737,078 ('078). Although the conflicting claims are not identical, they are not patentably distinct from each other because the '078 patent claims a process for enhancing reproductive performance in a companion animal consisting essentially of feeding the animal a diet including omega-6 and omega-3 fatty acids. The ratio of said omega-6 fatty acids to said omega-3 fatty acids is from about 3.5:1 to about 12.5:1. The amounts of the acids are found in claims 5-15. Animal includes dog or cat is found in claims 22 and 25. Process for maintaining litter size or process for increasing live births is found in claims 2-4. Accordingly, the present claims anticipate the claims of the '078 patent.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinhart EP 0 678 247 A1, in view of Stitt US 5,110,592.

Reinhart teaches a pet food product comprising fatty acid, e.g., omega-6 and omega-3 in the ratios of from 3:1 to 10:1 (see abstract, and page 2, lines 1-30). The product further comprises fiber, minerals, carbohydrates, 30-34% protein, and 20-23% fat (page 3, lines 13-54). The product can be used to treat and maintain companion animals, such as dogs or cats (page 3, lines 25-31).

Reinhart is silent as to the use of the product for enhancing or promoting reproductive performance.

Stitt teaches an animal feed blend comprising fatty acid to increase live births and improve the fertility of animals (see abstract, and columns 3-4). Thus, it is the position of the examiner that it would have been obvious for one of ordinary skill in the art to modify Reinhart's food product in view of the teachings of Stitt with the expectation of at least similar results, because both references teaches the advantageous results in the use of fatty acid in companion animal food product.

Claims 1-16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinhart et al., and Horrobin et al. US 5,508,307.

Reinhart is relied upon for the reason stated above. Reinhart does not teach the use of the product for enhancing or promoting reproductive performance, or increasing live births. However, it is well known in the pharmaceutical art that fatty acids, e.g., n-6 and n-3 acids, are useful in treating reproductive disorders. To be more significant, Horrobin is cited for the teachings of fatty acids, such as n-6 and n-3 series essential fatty acids have desirable effects in a wide range of disorders including cancer,

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infections, diabetes, immunological, renal, inflammation, and reproductive disorders (column 1, lines 9-35). Hence, it would have been obvious for one of ordinary skill in the art to optimize Reinhart's pet food product in view of the teachings of Horribin with the expectation of at least similar result, because the references teach the advantageous results of essential fatty acids.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson et al. US 7,084,175, in view of Reinhart EP 0 678 247 A1 or Shrimpton US 4,474,875.

Wilson teaches an animal feed composition comprising omega 3 and omega 6 fatty acid in a ratio of from about 3:1 to about 20:1, and the composition is useful for increasing the reproductive performance of swine (abstract; columns 5, lines 7-24; and column 6, lines 36-46). Wilson further teaches a method for increasing the number of live births, increasing the total births, decreasing the interval from weaning to estrus, increasing the uniformity of birth weight of offspring, decreasing pre-weaning death loss, and increasing the farrowing rate (column 5, lines 45 through column 6, lines 1-15).

Wilson does not explicitly teach pet includes dog or cat. However, it would have been obvious to one of ordinary skill in the art to modify the process of Wilson for cat or dog, because dog, cat, pig, or swine are known equivalent mammal. To be more specific, Reinhart teaches a pet food product useful for pet animals such as dogs, cats, horses, and more exotic animals such as guinea pigs (page 2, lines 20-26). Shrimpton teaches mammals include human, swine, dog, and cat (column 3, lines 54-57). Thus, it

would have been obvious to one of ordinary skill in the art to use the animal feed composition of Wilson for dog or cat, because Reinhart or Shrimpton teaches swine, dog or cat are known equivalent mammal.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan T. Tran whose telephone number is (571) 272-0606. The examiner can normally be reached on M-R 6:00 am to 4:30 pm; Thurs. (telework).

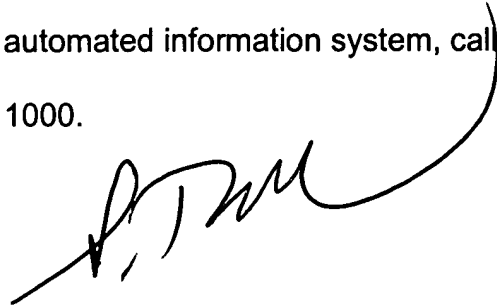
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to be 'S. Tran', with a long, sweeping horizontal stroke extending to the right.

S. Tran  
Primary Examiner  
Art Unit 1615